IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.272 OF 2007
IN
C.C.NO.1676/SS/2004

M/s.Development Credit Bank Ltd. ..Appellant
Vs.
M/s.JIK Industries Ltd. & Ors. ..Respondents

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Mr.S.A.Bhagwat, i/b. H.H.Nagi Nagi for the Appellant.
M.S.Thakkar i/b Amit P.Ghag for Respondent Nos.1 & 2.
Ms.S.V.Gajre, APP, for the State.

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : MARCH 12, 2007

P.C.

1. Heard the learned counsel for the appellant-original complainant, the learned counsel for the respondents and the learned A.P.P. for the State.

2. Being aggrieved by the judgment and order dated 13.11.2006 passed by the learned Metropolitan Magistrate, Small Causes Court at Mumbai in Case No. 1676/SS/2004 whereby the respondents-original accused nos.1, 2, 6 and 7

came to be acquitted, this appeal against acquittal has been preferred.

3. I have perused the order dated 13.11.2006. One of the main grounds for dismissing the complaint, was that the counsel for the accused submitted in writing vide Exhibit-3 that the writ petition of the present complainant was also dismissed. The said writ petition was Writ Petition No.2395 of 2006 preferred by the complainant against the order of the learned Sessions Judge whereby process against the original accused Nos.1, 2, 6 and 7 was quashed. However, admittedly, the said writ petition has not been dismissed and it is still pending before this Court. The learned counsel for the respondents admits that in fact incorrect statement has been made before the learned Magistrate. However, she has pointed out that the said complaint was not dismissed only on that ground. Be that it may; the main ground for dismissing the complaint, was that the counsel for the accused submitted in writing that the writ

petition of the complainant was dismissed. Any order, wholly or partly, which has been obtained on account of fraud, misrepresentation of facts or stating incorrect facts, cannot be allowed to stand.

4. In this view of the matter, the order of the learned Magistrate deserves to be set aside. Hence, Criminal Appeal is allowed. Complaint pertaining to C.C.NO.1676/SS/2004 is restored to file.

5. At this stage, the learned Counsel for the respondents has prayed for stay of this order. The said prayer is rejected.

(SMT.V.K.TAHILRAMANI,J.)